IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.84l7 of 2005

M/s Shriram Transport Fin Co Ltd
and anr...petitioners
vs
Aziz Ur Rehman Mohd Shafi & ors.. respondents

Mr.S P Bharati for petitioners

Mr P Mishra i/b M/s V Mishra and co for respondents

CORAM: S.U.KAMDAR J.

Dated 13.l2.2005

P.C:

. By the present petition an order passed on notice of motion no.3675 of 2005 dated 28.l0.2005 is challenged. The application was taken out under section 8 of the Arbitration and Conciliation Act, l996 for referring the dispute to arbitration in view of arbitration clause being clause l3 of the loan cum hypothecation agreement dated 26.2.2002. There is no dispute as to the arbitration agreement as recorded by the trial court. However, the trial court has rejected the application on the ground

that the genuineness of the agreement is in dispute.In my opinion, even if it is so, the provisions of the Arbitration and Conciliation Act, l996 shall apply and all the issues are to be referred to the arbitration including the fact that the arbitration agreement exits or not. In that light of the matter the impugned order passed by the trial court is liable to be quashed and set aside. Short Cause Suit No.3495 of 2005 is referred to the arbitration of Mr.Sanjay Kothari, advocate who shall determine the difference and disputes between the parties. The Arbitrator to proceed in accordance with the provisions of the Arbitration and Conciliation Act, l996.It is made clear that the petitioner will not take possession of the vehicle for a period of four weeks from today. In the meantime, the respondent will be at liberty to make necessary application either under section 9 or section l7 of the Arbitration and Conciliation Act, l996. Petition disposed of accordingly. No order as to costs.